STATE BAR OF CALIFORNIA
COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

MEETING SUMMARY - OPEN SESSION

Friday, October 8, 2004
(9:15 am - 12:30 and 1:00 - 5:00 pm)

Portola Plaza Hotel Monterey
Redwood 1 Room
2 Portola Plaza
Monterey, CA 93940

Members Present: Harry Sondheim (Chair); Linda Foy; Stanley Lamport; Raul Martinez; Kurt Melchior; Ellen Peck; Hon. Ignazio Ruvolo; Jerry Sapiro; Mark Tuft; Paul Vapnek and Tony Voogd.

Members Not Present: Karen Betzner; JoElla Julien; Ed George

Also Present: Randall Difuntorum (State Bar staff); Diane Karpman (Beverly Hills Bar Association Liaison); Lauren McCurdy (State Bar staff); Kevin Mohr (Commission Consultant); Toby Rothschild (Access to Justice Commission & LACBA Liaison); Dennis Maio (COPRAC Liaison); and Mary Yen (State Bar staff); Nancy Berner (Cooper, White & Cooper); Kevin Culhane (Chair, Committee on Professional Liability Insurance); Sue Talia (Limited Scope Representation Committee of the Access to Justice Commission).

I. APPROVAL OF OPEN SESSION ACTION SUMMARY FROM THE AUGUST 27 & 28, 2004 MEETING

Matter carried over.

II. REMARKS OF CHAIR

A. Chair's Report

The Chair called attention to the future assignments (including some new assignments) noted on the agenda materials transmittal letter from Lauren McCurdy dated September 27, 2004. The assignments are listed below:

Rule 2-400 (Peck-lead, George, Martinez)
Rule 3-110 (Vapnek-lead, Peck, Ruvolo)
Rule 3-120 (Ruvolo-lead, Foy, Julien)
Rule 3-210 (Tuft-lead, Foy, George) - new rule assignment
Rule 3-310 (Foy-lead, Peck, Melchior) - new rule assignment
Counterpart to 1-310X re lawyers influencing lawyers (Ruvolo (lead), Tuft, Vapnek, Mohr)
Consideration of Kurt's concern regarding clients having to waive attorney-client privilege (Melchior-lead, Julien, Tuft)
Rule 1-310X (Tuft-lead, Martinez, Peck) Mark Tuft has already prepared materials for this item.

A tentative schedule of meetings for 2004-2005 was distributed. The Chair asked members to inform him or staff about any schedule issues. Regarding the 2005 State Bar Annual Meeting to be held in San Diego, the Chair called for discussion on whether the Commission should hold a meeting and/or present an educational program at the 2005 Annual Meeting. Following brief discussion, the Commission agreed to proceed with a meeting at the San Diego State Bar Annual Meeting and, in addition, agreed to explore the possibility of co-sponsoring an educational program with representatives of the San Diego County Bar Ethics Committee.

B. Staff's Report

Staff reported that SB 1246 (re former judge conflicts) and AB 2713 (re government attorney whistle-blower) were vetoed by Governor Schwarzenegger. The Chair ask that these topics be accounted for on the Commission's inventory. Staff also reported that the Conference of California Bar Associations and the State Bar Trusts & Estates Section endorsed proposals for the State Bar to sponsor legislation to amend Bus. & Prof. Code §6068(e) to include an exception permitting disclosure of confidential information to protect the interests of impaired clients. Lastly, staff informed the Commission that the Office of Professional Competence booth at the 2004 Annual Meeting exposition features the beta testing of a local "weblog" that allows booth visitors to review the Commission's tentative draft rule amendments and to post comments. The Chair expressed interest in strategic planning aimed at assuring that input from nonlawyers is received when the Commission's work is formally distributed for public comment.

III. MATTERS FOR ACTION

A. Consideration of Rule 1-100. Rules of Professional Conduct, in General

The Commission considered a May 12, 2004 message from Mr. Mohr summarizing prior consideration of proposed amended rule 1-100. The Chair began by calling for a discussion of whether the rule should be acted on or postponed. A straw vote was taken and it was determined that the rule should not be postponed.

Next, the Chair called for general comments on rule amendment concerns. Among the points made during the discussion were the following.

(1) The rule should be changed to clarify that the consequences of violating an RPC is not limited to professional discipline. Lawyers need to know that the rules have been used outside of the State Bar discipline system.

(2) The RPC's need to assume their rightful place in California law as the resource for the standards governing the professional conduct of lawyers. This is not to say that the RPC's should set civil standards of care as this is not the purpose of the rules. However, it would be confusing and misleading for RPC 1-100 to omit any acknowledgment of the application of the rules in non-disciplinary contexts.

(3) It would be an impossible task to draft a comprehensive expose′ on the consequences of violating the RPCs.

(4) The RPC's and the 1-100 statement of the avowed purpose and function of the RPC's should be limited to disciplinary rules notwithstanding the use of RPC's in other contexts. To attempt to do otherwise would force members, the courts, and State Bar prosecutors to ascertain which rules are intended to have disciplinary consequences and which rules are primarily for non-disciplinary consequences.

(5) As a general proposition, the starting point should be disciplinary rules but, on an individual rule basis, it would be appropriate to consider whether a rule discussion section should alert lawyers to relevant non-disciplinary concerns that have been made evident by case law.

(6) The RPC's should not be a treatise and should not include aspirational standards. Rule 1-100 should be amended to specifically state that the RPC's are "rules of reason." This approach is workable for standards where the emphasis is more on guiding compliance rather than setting a disciplinary boundary. A fine example is RPC 3-600.

(7) Tracking the ABA presents advantages in teaching professional responsibility to law students. To avoid "grey letter law" confusion, a use note entry for each rule could be used to clarify the intended function or emphasis as a disciplinary rule or a conduct/guidance standard.

(8) Treated as a whole, the RPC's can't be a schizophrenic document. Depending on the specific standard at issue, a rule that is intended to have a disciplinary consequence may set a standard that is too low or too high to serve as a general standard of attorney conduct.

(9) The ultimate goal of the rules is compliance and a bright-line standard is required if compliance is to be achieved. Guidance can co-exist with disciplinary standards but the text must be clear as to what conduct is disciplinable and what conduct is a best practice.

(10) The ABA and CA are distinct in that the MR's are only "partly obligatory" while all RPC's are mandatory. However, the format of the RPC's includes official Discussion sections that are explanatory and can be used to convey guidance on best practices.

(11) The ABA and CA also differ in terms of institutional function. The ABA has professionalism objectives that permeate the MR's while CA is strictly a consumer protection regulatory code not unlike a motor vehicle code.

(12) At a philosophical level, all rules are inherently normative but the issue is how to deter non-compliance (moral disapprobation, criminal penalties, civil liability, etc. . .). Consistent with statutory authority, the RPC's must serve as disciplinary rules but at the same time there is no way to keep the courts or other government regulators from looking to the RPC's in non-disciplinary contexts. One strategy is simply to draft the best possible rule language and accept the fact that it may be used for discipline as well as other purposes.

During the Commission's discussion, the Chair welcomed Kevin Culhane, a representative of the State Bar's Committee on Professional Liability Insurance and a former member of the State Bar Board of Governors. The Chair invited Mr. Culhane to address the Commission. Mr. Culhane expressed great concern that the rules not be misused as civil standards for negligence or breach of fiduciary duty. He also indicated that in cases where plaintiff lawyers attempt to use the RPC's as civil standards, the existing language in RPC 1-100 has been

persuasive in asserting that the RPC's serve an exclusive disciplinary function. He emphasized that an appellate case like the *Mirabito* case can be distinguished by showing that the RPC's considered at the time of that decision were the pre-1989 RPC's that did not include the clear statement found in existing RPC 1-100(A) that the rules do not impact "any substantive legal duty" outside of a disciplinary context. Mr. Culhane cautioned that changing RPC 1-100(A) could result in a massive expansion in professional liability.

Following discussion, the Chair assigned the following codrafters to prepare a draft of a proposed amended rule 1-100: Mrs. Julien: Mr. Lamport (lead); Mr. Melchior; Mr. Ruvolo; and Mr. Tuft.

[Intended Hard Page Break]

B. Consideration of Rule 2-100. Communication With a Represented Party

The Commission considered a September 23, 2004 memorandum from Mr. Martinez presenting a proposed amended rule 2-100. Mr. Martinez summarized the issues posed by the proposed amended rule. The Chair began by calling for a discussion of the exception for communications with a public officer, board committee or body. Among the points made during the discussion were the following.

(1) Some litigated matters will implicate a person's right to petition government and the exception exists to accommodate that right and to protect the rule from challenge as a restraint on political speech. This can arise in a simple tort action against a city or county defendant where the government's decision to settle can be recast as a policy issue and discussed in public meetings or through private lobbying.

(2) As this exception involves constitutional issues, the rule must be carefully drafted to avoid both facial and "as applied" challenges.

(3) Existing municipal law defines who is a "public officer." A governmental person who is not a public officer ordinarily will fall into the category of an employee and the "control group plus" test is triggered to determine whether that employee is a "party" for purposes of the rule.

(4) Parity dictates that part (B) of the rule be modified to clarify that a governmental agency is a "corporation."

(5) Even if the exception, itself, is not revised, consideration should be given to adding guidance to the discussion section that helps lawyers ascertain who is a public officer under relevant California provisions and case law.

(6) The law of "public officers" and "officials" is too broad to be briefly addressed in a concise discussion section.

Following discussion, the Chair took a straw vote on the issue of exploring a revised public officer exception. Due to the absence of a strong consensus revealed by the straw vote, it was left to the codrafters to decide what revisions, if any, ought to be made to the public officer exception. At the suggestion of staff, the Chair asked that representatives of public lawyer groups that have worked with COPRAC be contacted and informed at such time that the codrafters submit a revised draft rule modifying the public officer exception.

Next, the Chair called for discussion of issues raised by the practice of limited scope representation (a.k.a., "unbundling of legal services"). The Chair welcomed visitor M. Sue Talia, representative of the Limited Scope Representation Committee of the Access to Justice Commission, and invited her to address the Commission on possible issues arising from RPC 2-100. Ms. Talia indicated the importance of limited scope representation as a method of assuring party access to the court system. She indicated that thousands of family law litigants are benefitted, in one way or another, by some form of limited scope representation provided by private attorneys, legal services groups or court-connected services. She presented the following three scenarios as examples of situations that appear to require RPC 2-100 clarification:

I. "**Limited court appearance**: A litigant retains an attorney to represent him in court for part, but not all, of a legal proceeding. This may take the form of an attorney appearing only at a single hearing, or representing the client only on some issues (such as child custody) while the client self-represents on others. In such a case, this practice has been sanctioned by the Judicial Council, which has developed a special form (FL950 attached hereto) to advise the court and opposing party of the parameters of the limited scope within which the attorney is appearing."

II. "**Document or other assistance without court appearance**: An attorney is retained for services which do not include appearing of record or attending court hearings. This might include negotiating with the opposing party for some (but not all) aspects of the matter, overseeing discovery conducted by the litigant in pro per, or offering any of a wide range of legal services. In this situation, the opposing attorney or party is aware of the attorney's involvement."

III. "**Advice and Counsel**: Where an attorney is consulted to assist with drafting pleadings, coach the litigant on procedures, prepare legal research and the like, and the involvement of the attorney is not disclosed to the opposing party or litigant."

In addition to the above, Ms. Talia referenced Mr. Rothschild's September 29, 2004 memorandum to the Commission addressing the limited scope representation issue. The Chair asked Commission members to respond to Ms. Talia's comments. Among the points raised were the following.

(1) There is nothing unusual or improper about the concept of limited scope representation. The real issue is how does an opposing counsel interact properly with a pro se litigant?

(2) The ABA has dealt with this issue by imposing an objectively based standard on the scope of representation of the target pro se party who has limited scope representation and this approach should be considered by the codrafters.

(3) An analogy in criminal law is the use of advisory or standby counsel assigned to criminal defendants who attempt to conduct their own defense.

(4) At the very least, the rule Discussion section could be revised to indicate that limited scope scenarios can be analyzed based on the scope of representation.

(5) There are more problems in situations where a party has a "secret" limited scope counsel.

(6) Consideration should be given to modifying the rule so that the burden is on a limited scope counsel to put the other attorney on notice about the fact and breadth of a representation of a pro per litigant.

(7) Information provided by a pro per litigant, not only their counsel, should be acceptable notice to the other attorney. One of the goals is to keep costs down and to empower a client to assume doable aspects of their representation.

(8) The problem of indirect communications is posed by limited scope representation matters.

(9) The COPRAC approach to RPC 2-100 issues in State Bar Formal Op. Nos. 1993-131 and 1996-145 can be applied to address some of the limited scope representation scenarios.

Following discussion, the Commission considered a motion to include some distillation of Ms. Talia's examples in the rule discussion section. This motion passed by a vote of 7 yes, 2 no, and 1 abstain. Mr. Sapiro was added to the codrafter team. The Chair asks the codrafters to consult with Ms. Talia and Mr. Rothschild in developing the next draft.

[Intended Hard Page Break]

C. Consideration of Rule 2-200. Financial Arrangements Among Lawyers

The Commission considered a September 21, 2004 message from Mr. Lamport presenting Draft 3 of a proposed amended rule 2-200 and outlining rule amendment issues. Mr. Lamport summarized the issues. The Chair called for a discussion of each of the issues with the goal of addressing rule language only after a consensus has been reached on the resolution of the issues.

The Chair began with the first enumerated issue in Mr. Lamport's September 21, 2004 memorandum: Whether RPC 2-200 should be revised to require disclosure to a client at the time of or soon after the lawyer enters an agreement to divide a fee. It was indicated that this issue was previously discussed but the Chair would entertain a motion to reconsider in view of the new concern for multiple client representations. Among the points raised during the discussion were the following.

(1) Where a lawyer represents multiple clients (i.e., mass tort plaintiffs), it may be impractical to seek consent "at the time the lawyers enter into the agreement to divide the fee." The mechanisms of mass tort and class action litigation are access to justice concepts and the proposed change to RPC 2-200 would raise the costs of such litigation.

(2) Logically, if consent is not sought at the time of the agreement to divide fees, then the client protection rationale articulated in *Chambers* is not effectuated by the terms of the rule.

(3) Mandating early consent is unnecessary as it would be redundant of the duty to timely communicate a significant development.

(4) RPC 3-310(D) re "aggregate settlements" is precedent for the concept that lawyers representing multiple clients must assume the burden of seeking individual client consent.

(5) Unlike RPC 3-310(D), under proposed amended rule 2-200, consent is required near the inception of the relationship and this timing element is a problem in multiple client cases.

(6) As a client protection matter, the terms of the rule should reflect the Supreme Court's apparent policy of giving a client the information needed to assess the roles of independent lawyers participating in their representation.

(7) California permits "pure referrals" and a marquee lawyer who brokers cases might exploit a multiple client exception to the consent requirement.

(8) The proposed change is unworkable whether or not multiple clients are in the picture. As long as client consent is required prior to the division of fees, that is enough. To require earlier consent is to force lawyers to anticipate staffing and expertise issues that may not be readily ascertained until later in a case. In fact, in protracted litigation, it could arise at multiple junctures. The percentages or amounts of splits may not be defined by the agreement at the time it is entered into and may change as the case progresses. If the duty to communicate is properly discharged, then the client is protected and consent to fee splits may wait until the fee is about to be split, the time when actual agreed upon disbursements are made. RPC 2-200 is not "broken" and does not need to be "fixed" in regards to the timing of consent.

(9) The California approach to fee splits is the most liberal policy in the country and is based on Supreme Court decisions favoring referrals. If the rule is amended to require early consent, then there is a concern that this could inhibit or chill the longstanding California policy favoring referrals. In addition, assuming this change is made, it would be bad precedent to carve out an exception for multiple client representations as the access to justice policy could be argued in other areas of the rules and lead to a two-tier lawyer regulatory system that offers special standards for multiple client representations.

(10) All clients, including those in mass tort litigation, should enjoy equal protection under the rules, especially a rule like 2-200 that empowers clients to object.

Following this discussion, the Commission considered a vote to reconsider the prior tentative decision to amend the rule to require consent "at the time of an agreement to divide fees" with reconsideration allowing for a subsequent motion regarding any exception for multiple client representations. The motion to reconsider failed (4 yes, 6 no, 0 abstain). Based on the vote, the Chair indicated that the codrafters should retain the amendment but should be free to consider discussion section revisions to clarify this matter in accordance with the points raised.

Next, the Chair raised the second issue in Mr. Lamport's September 21, 2004 memorandum: Whether RPC 2-200 should include the State Bar Formal Op. No. 1994-138 three-part test adopted in *Chambers* and whether that test should be characterized as a "definition" of a fee split. Mr. Lamport indicated that Draft 3 uses the precise language stated in *Chambers*. In response, it was asserted that the rule does not need to be boxed-in by the *Chambers* criteria. The facts of that case led the Supreme Court to rely on certain factors. It is not clear that the Supreme Court would necessarily do so in a subsequent case. It is sufficient to provide a "see "citation. Following brief discussion, the Commission considered a motion to use a "see citation" to *Chambers* in Disc. [1] without portraying the reference as a test or definition of a fee split. This motion passed by a vote of 5 yes, 2 no and 1 abstain.

Next, the Chair raised the third issue in Mr. Lamport's September 21, 2004 memorandum: Whether RPC 2-200 should provide that full disclosure to a client under (A)(1) includes the identity of an outside lawyer who will receive a fee split. By consensus, the Commission authorized the codrafters to incorporate the suggested concept at the end of Disc. [4] of Draft 3.

Next, the Chair raised the fourth issue in Mr. Lamport's September 21, 2004 memorandum: Whether RPC 2-200 should provide that the fee split agreement must be in writing. It was observed that requiring a written fee split agreement would facilitate proof of the time of the agreement for purposes of determining the issue of timely client consent. It also was indicated that the amendment would effectively elicit public comment on the rule revision concept alluded to by the Court of Appeals in the *Mink* case. The Commission considered a motion to accept this amendment. This motion passed by a vote of 5 yes, 4 no, and 0 abstain. The Chair indicated that the codrafters were free to make a motion to reconsider if, for example, the next redraft proved unworkable or raised new.

[Intended Hard Page Break]

D. Law Firm Definition (previously considered as part of proposed new rule 1-310X and proposed amended rule 2-200)

Matter carried over.

E. Consideration of Rule 2-300. Sale or Purchase of a Law Practice of a Member, Living or Deceased

Matter carried over.

F. Consideration of Rule 3-200. Prohibited Objectives of Employment

Matter carried over.

G. Consideration of Rule 3-300. Avoiding Interests Adverse to a Client

Matter carried over.

[Intended Hard Page Break]

H. Consideration of Rule 1-400. Advertising and Solicitation

The Commission considered a September 22, 2004 message from Mr. Mohr providing a Draft 4 (clean and redline) of proposed rules 7.1 to 7.5 (revised RPC 1-400) and a document organizing the RPC 1-400(D)(6) Advertising Standards by rule. Mr. Mohr presented an overview of the proposal and referenced the endnotes for specific drafting issues. The Chair called for a discussion of each of the endnotes.

Regarding Endnote 1, by consensus the Commission agreed to use the term "lawyers" rather than "members" throughout this series of rules.

Regarding Endnote 2, by consensus the Commission determined not to subsume within this series of rules, the RPC 1-320(B) and 2-200(B) concepts of prohibited compensation for client referrals. The Chair asked Mr. Lamport (lead on RPC 2-200) and Mr. Tuft (lead on proposed new rule 1-310X/Rule 5.4) to work together to develop a recommendation for handling these concepts (i.e., as possible stand-alone rules).

Regarding Endnote 3 (re "communications authorized by law"), by consensus the Commission deleted the last two sentences of Disc. [4] to proposed rule 7.2 to read: "Neither rule 7.2 nor rule 7.3 is intended to prohibit communications authorized by law."

Regarding Endnote 4, the Commission considered a motion to adopt Mr. Mohr's recommended revisions. This motion passed by a vote of 8 yes, 0 no, and 1 abstain. As revised, it would read: "Subparagraph (b)(2) is intended to permit a lawyer to pay the usual charges of a group or prepaid legal service plan exempt from registration under Business and Professions Code section 6155(c)."

Regarding Endnote 5 (re the statutory advertisement retention period under B&P sec. 6159.1, for purposes of posting on the website it was agreed that the Commission would indicate an intent to delete the presently included cross-reference if the statutory retention period is deleted.

Next, the Chair called for discussion of the RPC 1-400(D)(6) Advertising Standards. Among the points raised during the discussion were the following:

(1) There is no objection to retaining the authority to adopt standards vested by the Supreme Court in the Board of Governors.

(2) The original intent of the standards was to enhance that part of RPC 1-400 that is proposed to be revised primarily as rule 7.1(d)

(3) The State Bar Office of Trial Counsel recommends maintaining standard numbers:1, 2, 5, 6,12,13,15,16; and deleting standard numbers: 3, 4, 7, 8, 9,10.

(4) Standard no. 5 should be addressed within proposed rule 7.3 and there should be no alteration of the burden of proof.

(5) Standard nos. 14 and 15 should be retained within proposed rule 7.1.

(6) Standard no. 12 can be retained within proposed rule 7.2(c).

(7) Standard nos. 9 and 10 should be retained within proposed rule 7.1.

Following discussion, the Commission considered a motion to authorize the codrafters to draft appropriate language for proposed rule 7.1 stating the handling of the standards as discussed for a mail ballot approval. This motion passed by a vote of 5 yes, 4 no and 2 abstain. Proposed rule 7.1(d) would read:

"The Board of Governors of the State Bar may formulate and adopt standards as to communications which will be presumed to violate rule 7.1, 7.2, 7.3, 7.4 or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. 'Presumption affecting the burden of proof' means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers."

[Intended Hard Page Break]

I. Discussion of Rule Numbering System

The Commission considered an August 25, 2004 message from Mr. Mohr collecting materials and messages concerning the ABA and California rule numbering system. The Chair called for a discussion of whether the ABA rule numbering system should be tentatively adopted together with some method for indicating where California has elected not to adopt a particular rule or series of rules. Among the points made during the discussion were the following.

(1) Adoption of the ABA numbering system may be mis-perceived as a premature overall decision to follow the content of the ABA Model Rules. The Commission should not foster the appearance of an abdication of its charge.

(2) The California numbering system may be a better format and organizational structure and it is not clear that abandoning a better system is justified for the ease and convenience of law students and professional responsibility law professors.

(3) Use of the ABA system may help to show where California has departed from a particular MR or series of MR's.

(4) As was the process for the original Commission, the substantive content of the rules should be completed before broaching the issue of organization. Lawyers possess the skill to find rules in any sound format and it is unnecessary to provide the "common matrix" of the ABA system. The focus should be on the rules themselves, not the numbering system.

(5) California and Maine are essentially the only states that do not use a version of the ABA numbering system. The proliferation of MJP dictates that serious consideration be given to adopting the ABA system. Any benefit to law students and law professors is secondary to the benefit to the public by having a rule numbering system that promotes ease of compliance wherever a lawyer may be practicing law.

(6) The Commission's charge is to "eliminate unnecessary differences" with the ABA. Thus, the question is whether a California system is a "necessary" difference. For example, if the content of the rules is a complete departure from the content of the MR's then that may support a California system as a necessary difference.

(7) California should not be the very last state to adopt the ABA system. The burden is on the Commission to articulate a good reason why the ABA system should not be adopted.

(8) The ABA numbering system inherently involves certain groupings and subordination within groups and within individual rules. Adopting the ABA system may seem easy in the abstract but the Commission may discover that certain California "square pegs" will not fit into the ABA's "round holes." It would be a major downside if the emphasis that California places on a specific rule is lost because that concept is buried as a subparagraph in the ABA format.

(9) While California lawyers may be able to learn and use any format and system, efficiency is the key advantage of the ABA system. Looking to the future is an important function of the Commission and as law schools continue to teach and test the MR's in and outside California, new lawyers who end-up practicing in California will have a head-start in knowing

where to find certain rule concepts. At some future time, the California system will be completely forgotten.

(10) Assuming *arguendo* that California will depart, to some degree, from the MR's, using the ABA system will promote the ability of California representatives to the ABA to influence changes in the MR's that track California. With Ethics 2000 there was some movement toward California concepts (i.e., written consent) and if the numbering system is made similar it will be easier to pursue similar changes in the future.

Following discussion, the Commission considered a motion to tentatively adopt the ABA rule numbering and organizational system, but that vote does not mean that the substance of a rule, or the sub-organization within a particular rule is being adopted. This motion passed by a vote of 8 yes, 3 no , 0 abstain. The Chair asked staff to work with Mr. Mohr to consider amending the documents currently posted on the website to reflect the action of the Commission.